

# EXHIBIT 4

1 YITAI HU (SBN 248085)  
yitai.hu@alston.com  
2 SEAN P. DEBRUINE (SBN 168071)  
sean.debrune@alston.com  
3 ELIZABETH H. RADER (SBN 184963)  
elizabeth.rader@alston.com  
4 JANE HAN BU (SBN 240081)  
jane.bu@alston.com  
5 JENNIFER LIU (SBN 268990)  
celine.liu@alston.com  
6 PALANI P. RATHINASAMY (SBN 269852)  
palani.rathinasamy@alston.com  
7 **ALSTON & BIRD LLP**  
275 Middlefield Road, Suite 150  
8 Menlo Park, CA 94025-4008  
Telephone: 650-838-2000  
9 Facsimile: 650-838-2001

10 Attorneys for Plaintiff and Counterdefendant  
11 ELAN MICROELECTRONICS  
CORPORATION

12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION  
16

17 ELAN MICROELECTRONICS  
CORPORATION,  
18  
19 Plaintiff and Counterdefendant,  
20 v.  
21 APPLE, INC.,  
22 Defendant and Counterplaintiff.

Case No. 09-cv-01531 RS (PSG)

**ELAN MICROELECTRONICS  
CORPORATION'S FOURTH  
SUPPLEMENTAL OBJECTIONS AND  
RESPONSES TO APPLE, INC.'S FIRST  
SET OF INTERROGATORIES [NOS. 5,  
7, 11]**

23 AND RELATED COUNTERCLAIMS  
24

25 **PROPOUNDING PARTY: APPLE, INC.**

26 **RESPONDING PARTY: ELAN MICROELECTRONICS CORPORATION**

27 **SET NUMBER: ONE (1)**  
28

1 Plaintiff Elan Microelectronics Corporation (“Elan”) hereby supplements its objections and  
2 responses to Defendant Apple, Inc.’s (“Apple”) First Set of Interrogatories to Elan  
3 Microelectronics Corporation (“Interrogatories”) as follows:

4 **GENERAL STATEMENTS AND OBJECTIONS**

5 Elan incorporates by references all of its previous Generate Statements and Objections and  
6 its General Objections to Apple’s definitions and instructions.

7  
8 **SPECIFIC OBJECTIONS AND RESPONSES**

9 **INTERROGATORY NO. 5:**

10 Separately for each Elan Patent-in-Suit, state whether Elan contends that it has satisfied the  
11 marking requirements of 35 U.S.C. § 287, and if so, describe in detail all facts and circumstances  
12 supporting or otherwise relating to that contention (including documents and persons with  
13 knowledge).

14 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5:**

15 Elan incorporates herein by reference each of its foregoing General Objections. Elan  
16 objects to this Interrogatory to the extent that it is intended to be treated as one interrogatory, as it  
17 contains multiple subparts, and thus will be treated as multiple interrogatories against the  
18 maximum permissible. Elan also objects to this Interrogatory to the extent it seeks information  
19 protected from disclosure by the attorney-client privilege, the attorney work product doctrine or  
20 any other applicable privilege, immunity, or protection.

21 Subject to and without waiving the foregoing objections, Elan responds that as early as  
22 May, 2006, Elan started marking the patent number of the ‘352 Patent, among other patents, on the  
23 boxes in which it ships its touch-sensitive input devices practicing the ‘352 Patent. *See*  
24 ELN017263-ELN017264. Also *see* ELN120369, ELN120371-ELN120374. Further, Elan placed  
25 the same on the user interface window on or about April 2008. *See* ELN120367-ELN120368.

26 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5:**

27 Elan incorporates by reference each of its previous General and Specific Objections.  
28 Subject to and without waiving the foregoing objections, Elan supplements its response as follows:

1 Beginning no later than April 16, 2008, Elan started to mark the 352 Patent on Elan's  
2 touch-pad products through the driver's software. When Elan's direct customer (*e.g.*, a  
3 downstream manufacture or vendor) installs the driver software, the notice that this touchpad is  
4 covered by the 352 Patent, among other Elan patents, will be displayed on the user interface  
5 window. Similarly, when an end user of the final downstream product opens the control panel  
6 window for the touchpad functionalities, the 352 Patent notice, among other Elan patents, will be  
7 displayed on the user interface window. Elan has continuously included notice of the 352 Patent  
8 on the specifications of its touch-pad products since at least October 26, 2006. Elan has placed a  
9 notice of the 352 Patent on the outer box that packages its touch-sensing products continuously  
10 since at least May 26, 2006.

11 Elan further responds that it does not directly sell, deliver or ship its touch-sensing  
12 products to the United States. Thus, it has no knowledge as to the location or the final designation  
13 of the packaging boxes or specifications of its touch-sensing products.

14 Elan has not marked the 353 Patent on any of its touch-sensing products.

15 Elan further responds that Apple was aware of the 352 Patent no later than August 25,  
16 2004, when Apple disclosed the 352 Patent as a prior art reference during prosecution of U.S.  
17 Patent No. 7,561,146. Elan gave Apple actual notice of its infringement of the 352 Patent on  
18 August 29, 2006, when Elantech sent a letter to Apple regarding Apple's unlicensed use of the 352  
19 Patent (APEL0058579). Elan also directs Apple to documents bearing production numbers  
20 ELN017263-ELN017264, ELN120369, ELN120371-ELN120374 where additional information  
21 responsive to this Interrogatory may be ascertained.

22 **INTERROGATORY NO. 7:**

23 Describe in detail all facts and circumstances relating to each communication between Elan  
24 and any third party concerning licensing, contracts, agreements, covenants not to sue, settlement  
25 agreements, actual or potential infringement, invalidity, or unenforceability of any of the Patents-in-  
26 Suit and the identities of all such third parties, including, but not limited to, the identity of each  
27 entity contacted by Elan regarding any of the Elan Patents-in-Suit and each license granted,  
28 obtained, or offered by Elan to any of the Elan Patents-in-Suit.

1 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:**

2 Elan incorporates herein by reference each of its foregoing General Objections. Elan  
3 objects to this Interrogatory to the extent that it is intended to be treated as one interrogatory, as it  
4 contains multiple subparts, and thus will be treated as multiple interrogatories against the  
5 maximum permissible. Elan also objects to this Interrogatory as overbroad and unduly  
6 burdensome to the extent it seeks “each communication between Elan and any third party.” Elan  
7 further objects to this Interrogatory to the extent it seeks information not relevant to any present  
8 claim or defense in this matter and not reasonably calculated to lead to the discovery of admissible  
9 evidence. Elan also objects to this Interrogatory to the extent it seeks information containing  
10 proprietary or confidential information of Elan or a non-party. Elan further objects to this  
11 Interrogatory to the extent it seeks information protected from disclosure by the attorney-client  
12 privilege, the attorney work product doctrine or any other applicable privilege, immunity, or  
13 protection.

14 Subject to and without waiving the foregoing objections, Elan responds that Elan and  
15 Synaptics, Inc. entered into a settlement agreement with respect to ‘352 Patent in October 2008.  
16 Elan further states that Elan and Synaptics were engaged in litigation concerning, *inter alia*,  
17 Synaptics’ infringement of the ‘352 patent. That litigation also involved Prostar Computer, Inc.  
18 and Averatec, Inc. The pleadings and correspondence between the parties have been produced to  
19 Apple. Elan objects to the request that it “describe in detail each communication” between Elan  
20 and Synaptics, Prostar or Averatec during that litigation as unduly burdensome.

21 Elan further responds that Elan had at least the following communications concerning  
22 Elan’s ‘352 patent:

- 23 • Communications with Richard Wooley of Cirque Corporation concerning Cirque’s  
24 GlidePoint® touchpad with so-called Advanced Gestures, through Elan’s outside  
25 counsel Alston & Bird, beginning during or around July 6, 2009. *See* ELN126472.
- 26 • A letter to Mary E. Doyle of Palm, Inc. concerning Palm’s Palm Pre smart phone,  
27 through Elan’s outside counsel Alston & Bird, during or around July 6, 2009. *See*  
28 ELN126471. That letter was followed by a telephone conversation between Sean

1 DeBruine, counsel for Elan, and Douglass Luftman, Palm's Assistant General  
2 Counsel.

- 3 • Communications with Charles Chamas and Anthony Baca of Hewlett-Packard  
4 Company, through Elan's outside counsel Akin Gump Strauss Hauer & Feld LLP  
5 ("Akin Gump"), beginning during or around January 4, 2007. Mr. Baca and Mr.  
6 DeBruine also had at least one telephone conversation. See ELN126444.
- 7 • Communications with Tsuneo Toda of Toshiba Corporation concerning certain  
8 Toshiba laptop products, through Elan's outside counsel Akin Gump, beginning  
9 during or around January 4, 2007. See ELN126446, ELN126451, and ELN126454.

10 Elan further responds that it has had no license discussions regarding the '353 Patent.

11 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:**

12 Elan incorporates herein by reference each of its foregoing General and Specific  
13 Objections stated above and the response provided above.

14 Elan further states that it has not licensed or attempted to license the 353 Patent with any  
15 entity. Elan has not licensed or attempted to license the 352 Patent to any entities outside of the  
16 United States.

17 **THIRD SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:**

18 Elan incorporates herein by reference each of its foregoing General and Specific  
19 Objections stated above and the responses provided above.

20 Elan further incorporates by reference its responses to Apple's Interrogatory No. 34 and  
21 Cate Elsten Expert Reports (including all of the supplemental and amended reports) served on  
22 Apple in the ITC investigation captioned *Certain Electronic Devices With Multi-Touch Enabled*  
23 *Touchpads And Touchscreens And Components Thereof*.

24 **INTERROGATORY NO. 11:**

25 Separately for each of the Apple Patents-in-Suit, describe in detail the facts and  
26 circumstances relating to Elan's first awareness of the patent, including *inter alia*, the date Elan  
27 first became aware of the existence of the patent, the person(s) who first became aware of the  
28 patent, the circumstances surrounding Elan's first awareness of the patent, the content of any

1 related communications or documents and any actions taken by you as a result (including  
2 documents and persons with knowledge).

3 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11:**

4 Elan incorporates herein by reference each of its foregoing General Objections. Elan  
5 objects to this Interrogatory to the extent that it is intended to be treated as one interrogatory, as it  
6 contains multiple subparts, and thus will be treated as multiple interrogatories against the  
7 maximum permissible. Elan also objects to this Interrogatory as overbroad and unduly  
8 burdensome. Elan further objects to this Interrogatory to the extent it seeks information not  
9 relevant to any present claim or defense in this matter and not reasonably calculated to lead to the  
10 discovery of admissible evidence. Elan also objects to this Interrogatory to the extent it seeks  
11 information protected from disclosure by the attorney-client privilege, the attorney work product  
12 doctrine or any other applicable privilege, immunity, or protection.

13 Subject to and without waiving the foregoing objections, Elan responds that it currently  
14 understands that Nick Lin, a patent engineer in Elan's Legal and IPR department prepared  
15 summaries of the '218 and '659 patents on or about September, 24, 2008 and February 26, 2009,  
16 respectively. Nick Lin uploaded the '218 patent summary onto Elan's document management  
17 system, and internally circulated the '659 patent summary to Chairman Yeh, the legal department  
18 and the research and development department. Elan was not aware of Apple's '218 patent or '659  
19 patent before Mr. Lin prepared the respective reports.

20 **SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11:**

21 Elan incorporates herein by reference each of its foregoing General and Specific  
22 Objections stated above.

23 Subject to and without waiving the foregoing objections, Elan amends its response as  
24 follows: Mr. Nick Lin, a patent engineer, currently serving as the Vice Project Manager in Elan's  
25 Legal and IPR department prepared a summary of the '218 Patent on or about September 24, 2008  
26 and uploaded the patent summary onto Elan's document management system. On or about  
27 February 25, 2009, Mr. Lin prepared the patent summary for the '659 Patent, and internally  
28 circulated the '659 patent summary to Chairman Yeh, and certain members of the IPR Legal

1 department and the research and development departments. Mr. Lin's patent summaries were  
2 generated as part of the routine review procedure that Elan conducted regarding the issuances of  
3 U.S. patents relating to touch-sensing input device technology. Elan was not aware of Apple's  
4 '218 patent or '659 patent prior to Mr. Lin's preparation of the respective reports. Elan further  
5 directs Apple to documents bearing production numbers ELN131240 and ELN1312138 where  
6 additional information responsive to this Interrogatory may be ascertained.

7 DATED: June 23, 2011

Respectfully submitted,

8

ALSTON & BIRD LLP

9

10

By: \_\_\_\_\_ /s/ Sean P. DeBruine

11

Sean P. DeBruine

Attorneys for Plaintiff

ELAN MICROELECTRONICS CORPORATION

12

LEGAL02/32698263v1

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



1 **CERTIFICATE OF SERVICE**

2 I am employed in the County of San Mateo, State of California. I am over the age of 18 and  
3 not a party to the within action; my business address is Alston & Bird LLP, 275 Middlefield Road,  
4 Suite 150, Menlo Park, California 94025. On June 23, 2011, I served the foregoing document(s)  
5 described as:

6 **ELAN MICROELECTRONICS CORPORATION'S FOURTH SUPPLEMENTAL**  
7 **OBJECTIONS AND RESPONSES TO APPLE, INC.'S FIRST SET OF**  
8 **INTERROGATORIES [NOS. 5, 7, 11]**

9 by the indicated means to the persons at the addresses listed:

10 Matthew D. Powers (matthew.powers@weil.com)

11 Edward R. Reines (edward.reines@weil.com)

12 Sonal N. Mehta (sonal.mehta@weil.com)

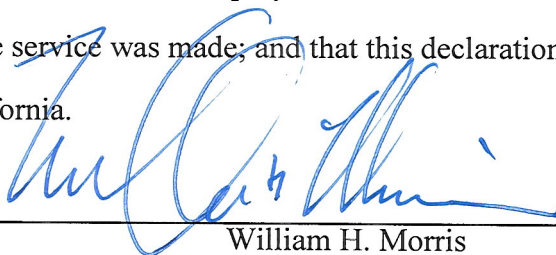
13 **WEIL, GOTSHAL & MANGES LLP**

14 201 Redwood Shores Parkway

15 Redwood Shores, California 94065

- Via Overnight Courier
- Via Hand Delivery
- Via Facsimile
- Via U.S. Mail
- Via E-mail

16 I am readily familiar with our firm's practice for collection and processing of  
17 correspondence via electronic mail and overnight courier. I caused the document(s) to be sent to  
18 the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a  
19 reasonable time after the transmission, any electronic message or other indication that the  
20 transmission was unsuccessful. I declare under penalty of perjury under the laws of the United  
21 States that the foregoing is true and correct; that I am employed in the office of a member of the  
22 bar of this Court at whose direction the service was made; and that this declaration was executed  
23 on June 23, 2011, at Menlo Park, California.

24 

25 William H. Morris